IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 27793 of 1997

Between:

1, Atmakuri Narsaiah, S/o. Erra Pocham, aged about 45 years,
presently working as Coal-Filler in M.K.-4 incilne of Singareni Collieries
Co. Ltd., Ramakrishnapur (Area) Division, M.R.Mandamarri,
Adilabad District.
2. Kande Ankose, s/o.Rayamallu, aged about 41 years,
presently working as Coal Filler in R.K.-5 incline of Singareni Collieries
Co. Ltd., Ramakrishnapur (area) Division, M.R. Mandamarri,
Adilabad District.

.....
PETITIONERS

AND

1.Management of Singareni Collieries Co. Ltd., Ramakrishnapur
(Area) Division, M.R. Mandamarri, Adilabad District.
2. Industrial Tribunal-I at Hyderabad, Chandra Vihar Bldgs.,
Nampally Road, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly a writ in the nature of certiorari calling for the records in I..D.No.45 of 1989, dated 23-04-1994 on the file of the Industrial Tribunal-I at Hyderabad and published in Official Gazette of India. Peruse the same and quash the Award dated 23-04-1994 insofar as refusing to grant back-wages from the date of orders of dismissal to the date of reinstatement with effect from 1-8-1994 and other attendant benefits by directing the respondent NO.1 to pay the back-wages from the date of the orders of dismissal of petitioners from the date of the orders of dismissal of petitioners from the service of the first respondent and other attendant benefits to the date of reinstatement and pass such other order or

orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.P.V.NARAYANA RAO

Counsel for the Respondent No.1: MR.K.SRINIVASAMURTHY

Counsel for the respondent No.2: Govt. Pleader for Labour

The Court Made the Following :

ORDER :

This Writ Petition is filed challenging the Award dated 23-04-1994 in I.D.No.45 of 1989 on the file of the Industrial Tribunal-I, Hyderabad.

The petitioners who were working as Coal-Fillers in Singareni Collieries Company Limited, Ramakrishnapur (Area) Division were dismissed from service by order dated 20-09-1984 and 30-09-1984 respectively on the ground that the petitioners along with four others were alleged to have committed the offences punishable under Sections 506, 341 and 294 read with Section 34 of the Indian Penal Code. However, criminal proceedings initiated against all the said employees ended in acquittal by Judgment dated 25-07-1985 in C.C.No.104 of 1984 on the file of the Judicial Magistrate of First Class, Luxettipet. Thereafter, the workmen of Singareni Collieries Company Limited, Ramakrishnapur, Adilabad District raised an industrial dispute with regard to termination of the petitioners herein. In pursuance thereof, the Government of India in exercise of powers under Section 10(1)(d) read with Section 2-A of the Industrial Disputes Act, 1947, by order dated 28-06-1989 referred the following dispute to the Labour Court for adjudication :

> "Whether the action of the Management of M/s. S.C.Co. LTD., Ramakrishnapur Area in terminating the services of Sri Atmakuri Narasaiah and Kande Ankose, Coal Fillers

RK-1 and 3 inclines w.e.f. 21-09-1984 and 01-10-1984 respectively and not paying back-wages with retrospective effect is justified? If not, to what relief the workman are entitled?"

Before the Labour Court, the Management filed a counter-affidavit and contested the claim. Both the parties adduced evidence, oral and documentary, in support of their respective claims. The Labour Court, on appreciation of the evidence on record, by Award dated 23-04-1994 held that the action of the Management in terminating the services of the petitioners and not paying back-wages with retrospective effect is not justified and consequently directed that they shall be reinstated into service from the date of the Award. However, it was held that they are not entitled for either back-wages or other attendant benefits. The said Award in I.D.No.45 of 1989 is under challenge by the petitioners / workmen to the extent of denial of back-wages and other attendant benefits.

I have heard the learned Counsel for the petitioners and the learned Counsel for the respondents and perused the material on record.

It is not in dispute that apart from the two petitioners herein, disciplinary proceedings were initiated against 3 other employees also for the alleged misconduct under the Company's Standing Order No.16(5). The allegation was that they assaulted an officer of the Company. On a criminal complaint lodged by the said officer, all the employees were prosecuted, however the proceedings ended in acquittal in the year 1985.

It is relevant to note that initially one of the employees Asampalli Mallaiah filed I.D.No.56 of 1984 before the Industrial Tribunal (Central), Hyderabad challenging the disciplinary proceedings initiated by the Management on the ground that the same were contrary to the settlement between the Workmen and the Management. Pending the

said proceedings, the Management proceeded with the domestic enquiry and filed Miscellaneous Petition No.79 of 1985 under Section 33(2)(b) of the Industrial Disputes Act, 1947 seeking approval to dismiss the petitioner therein i.e., Sri Asampalli Mallaiah from service. The Labour Court by order dated 30-04-1986 dismissed the said M.P.No.79 of 1985 holding that the domestic enquiry conducted by the Management was vitiated and illegal since the same was contrary to the terms of the statutory settlement dated 13-04-1984 under Section 12(3) of the Industrial Disputes Act. It appears that similar application filed by the Management in I.D.No.56/1984 seeking approval for dismissing two other employees were also dismissed on the same grounds. However, admittedly no such applications were filed so far as the petitioners herein before terminating their services.

Before the Labour Court, on behalf of the petitioners herein, it was contended that since no such approval under Section 33(2)(b) of the I.D. Act was sought, the entire proceedings were vitiated and the orders of dismissal were liable to be set aside. Though the Management filed a counter and opposed the claim contending that the since petitioners herein were not covered under the settlement dated 13-04-1984, they cannot be treated on par with the other employees, the Labour Court did not accept the same and held that the action of the Management in terminating the services of the petitioners was not justified and accordingly directed reinstatement. The said finding has become final since the Management did not choose to challenge the Award in I.D.No.45 of 1989. Therefore, it is not necessary for this Court to go into the question whether the failure on the part of the Management to seek approval in terms of Section 33(2)(b) of the Act has vitiated the proceedings. Thus, the only question remains for consideration is whether the denial of back-wages and other attendant benefits is justified in the facts and circumstances of the case.

In the counter-affidavit filed on behalf of the 1st respondent, it is

explained that the Singareni Coal Mines Karimikha Sangh on 10-04-1995 entered into an understanding with the Management whereunder it was agreed that the Management will reinstate the petitioners without back-wages from 01-08-1994 in full and final settlement of Award dated 10-04-1995 in I.D.No.45/1989. It was further agreed by the Union representing the concerned workmen that they will not raise any dispute and accordingly the petitioners have been reinstated into service with effect from 01-08-1994. The Union was represented by the petitioners themselves and they were signatories to the Settlement. Thus, it is contended that having agreed that they will not challenge the impugned Award, it is not open to them to file a Writ Petition claiming back-wages and other attendant benefits and particularly suppressing the settlement dated 10-04-1995 which was already implemented. It is also contended that the petitioners are guilty of laches since they failed to explain the delay of about three years in approaching this Court challenging the Award dated 23-04-1994 and on that ground alone, the Writ Petition is liable to be dismissed.

Section 2(p) of the Industrial Disputes Act defines “settlement” as a settlement arrived at in the course of a conciliation proceeding and includes a written agreement between the employer and workman arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer.

Rule 58 of the Industrial Disputes (Central) Rules, 1957 prescribes the procedure with regard to a settlement arrived at in the course of conciliation proceedings or otherwise. Sub-rule (4) of Rule-58 specifies that where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government,

the Chief Labour Commissioner (Central), New Delhi and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned.

In the case on hand, admittedly the settlement dated 10-04-1995 was not arrived at during the pendency of conciliation proceedings. Therefore, as per sub-rule (4) of Rule 58, it is mandatory to send a copy of the settlement to the officials specified thereunder. Nothing has been placed before this Court to show that the said requirement prescribed under Rule 58 was complied with. If that be so, I am unable to hold that the settlement dated 10-04-1995 is binding on the parties to the said settlement. As held by the Supreme Court in WORKMEN OF M/s. DELHI CLOTH GENERAL MILLS LTD. v. THE MANAGEMENT OF M/s. DELHI CLOTH AND GENERAL MILLS LTD.[1] where there is non-compliance with Rule 58(4) the settlement is invalid. The binding effect of any settlement under Section 18 of the Act would be operative only where the settlement was in compliance with the statutory provisions.

In the circumstances, I do not find any substance in the contention raised by the respondent that in view of the settlement dated 10-04-1995 the petitioners are estopped from assailing the correctness of the impugned Award.

Coming to the merits of the case, when once the Labour Court found that the action of the respondent in terminating the services of the petitioners without following the procedure prescribed under Section 33(2)(b) of the I.D. Act was illegal, the petitioners shall be entitled to full back-wages, particularly in the absence of any material to show that they were gainfully employed. It is also brought to my notice that the other employees namely Asamaplli Mallesh and Gadapa Mallesh who were also similarly situated were already reinstated with back-wages. Having regard to the facts and circumstances of the case,

I do not see any justifiable reason to deny back-wages to the petitioners.

In the result, the Writ Petition is allowed as prayed for and the impugned Award shall stand modified directing reinstatement

with all attendant benefits and with full back-wages. There shall be no order as to costs.

The Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this 18th day of June, 2004.

18TH JUNE, 2004.
GBS

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To
1.Management of Singareni Collieries Co. Ltd., Ramakrishnapur (Area) Division, M.R. Mandamarri, Adilabad District.
2. Industrial Tribunal-I at Hyderabad, Chandra Vihar Bldgs., Nampally Road, Hyderabad.
3. 2 CCs to the Govt, Pleader for Labou (OUT).
4.2CD copies.

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[1] AIR 1970 SC 1851